IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 42 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MANIBEN, W/O RUPAJI PUNJAJI

Appearance:

1. Criminal Appeal No. 42 of 1985

MR RM CHAUHAN, LD.APP for appellant-State of Gujarat

MR G RAMAKRISHNAN for Respondent No. 4

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE K.M.MEHTA

Date of decision: 24/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

The State of Gujarat has preferred this appeal initially against the respondents who are original accused nos.5, 6, 7 and 4 in Sessions Case No.54 of 1984. This Court admitted the appeal only against respondent no.4, i.e. Mohanji Rupaji Solanki - original accused no.4. In other words, the appeal preferred by the original accused nos.5, 6 and 7 were dismissed by this Court at the admission stage.

2. The State has also preferred Criminal Appeal No.43 of 1985 against the original accused nos.1, 2 and 3. It appears that there was a delay of 30 days in filing the said appeal, and therefore, an application being Criminal Misc.Application No.713 of 1985 was filed for condonation of delay. The Division Bench of this Court, by its order dated 10.7.1987 did not condone the delay and rejected the said application. Seven accused who faced the trial for the offences under Sec.147, 148, 149, 302, 326, 336, 324, 337, and 325 of the Indian Penal Code were convicted by the learned Addl. Sessions Judge, Kheda, at Nadiad by his judgment and order dated 29th August 1984 for different offences. All the accused were acquitted for the offence qua their constructive liability qua all the injured under Sec.147, 148, 149 of IPC or Sec.34 or 114 of IPC for the offences and under Sec.302, 324, 327, 325, and 326 of IPC read with Sec.147 of IPC. Accused no.4 was convicted for the offence under Sec.324 of IPC and was sentenced to rigorous imprisonment for two years and to pay a fine of Rs.2,000/- and in default to undergo further rigorous imprisonment for three months.

3. The prosecution case in nutshell may be stated as under:

On 7th February 1984, at about 10.00 hrs., in the morning, in village Chapatia of Taluka Kapadvanj in Kheda District, all the accused conjointly were told that the Babul tree situated near the house of Jibhaji Punjaji being of joint ownership of the informant Kalaji Mangaji and other prosecution witnesses and the accused and therefore, they should not cut the said tree. After exchange of heated arguments, original accused no.4 Mohanji inflicted two blows of stick on the head of deceased Jujaji Jibhaji. It is also the prosecution case that the other accused also voluntarily to cause hurt to other prosecution witnesses with ulterior motive and common object as stated above constituted unlawful assembly and used force or violence as members of the unlawful assembly. The deceased and injured prosecution witnesses were later on removed to Kapadvanj hospital.

The deceased was thereafter shifted to the Civil Hospital, Ahmedabad, where he succumbed to the injury on the next day.

Shri H.V.Rajgor, PW-15-Exh.56, PSI of Kapadvanj Police Station, on the basis of the complaint filed by Kaluji Mangaji, started usual investigation and on completion of the same, on finding prima facie material regarding the involvement of the accused, submitted the chargesheet against the accused before the learned Magistrate, who in turn, committed the case to the Court of Sessions, at Nadiad.

The charge at Exh.3 was framed against the accused. The accused pleaded not guilty and claimed to be tried. The further statement of the accused under Sec.313 of the Code of Criminal Procedure was recorded. After appreciating the oral as well as documentary evidence, the learned Judge has convicted all the accused for the lesser offence other than the offence under Sec.302 of IPC, as stated above.

4. As the present appeal is limited against the involvement of respondent no.4 in commission of the offence, we will discuss the evidence led by the prosecution only against him. Besides, the learned trial Judge has also not believed his involvement in the offences under Sec.147, 148, and 149 of IPC and has convicted accused no.4 only for the offence under Sec.324 of IPC. We will try to find out as to whether he can be convicted for any other offence than under Sec.324 of IPC.

5. To bring home the charge levelled against accused no.4, the prosecution in the instant case, has placed reliance on the medical evidence as well as oral evidence of the eye witnesses. There are as many as six eye witnesses. It may be stated that the accused and the prosecution witnesses are also related to each other. The dispute between them is with respect to the ownership of Babul tree. The accused started quarrel with the prosecution witnesses as they tried to cut the Babul tree without giving their share.

The complainant Kalaji Mangaji, PW3-Exh.24 is cousin brother of deceased Jujaji. He in his evidence has stated that the incident had taken place at about 10.00 a.m. Because of Cyclone, the Babul tree was about to fall on the house of deceased Jujaji and therefore, on the day in question, the deceased Jujaji and one Kanubhai had decided to cut the same with a view to save his

house. They were trying to remove the tree with the help of a rope and at that time, all the accused persons came with weapons like axe, dharia and pipes. Accused no.4 was having a stick with iron rings. The accused started pelting stones. The accused wanted to know as to why the tree was removed and the complainant replied that as the tree was likely to damage the house and therefore, they have removed it. Accused no.4 thereafter gave abuses and also gave stick blow on the head of deceased Jujaji. The deceased fell down on the ground. Blood started oozing out from the wound. The other accused also thereafter used their weapons on other prosecution witnesses. Rupaji Punjaji inflicted stick blow on the back of Jujaji. Rupaji also inflicted stick blow to Bai Ganga. Babarji Rupaji inflicted pipe blow on the hand of Motiji. Babarji also inflicted stick blow to Suraji on the head, however, it hit on the hand. Rupaji inflicted stick blow to his mother Jijiben on her hand. Ishwarbhai gave a dharia blow which hit on the middle finger of the complainant. According to this witness, when the commotion was going on, Amraji Bhudarji, Bhudarji Detalji, Motiji Kulaji and Jayaji Bhagaji had tried to intervene. After the incident, they were taken to the Kapadvanj hospital in a cart. Before going to the hospital, they went to the police station where this witness gave the complaint, Exh.29. Some of the injured were later on removed to Ahmedabad Hospital. According to this witness, deceased Jujaji was also shifted to the Civil Hospital, Ahmedabad where he survived for two days. In the cross examination, he has admitted that the incident started after the tree fell down on the ground, i.e. at about 11.00 a.m. According to him, the cutting of the tree continued for three hours. However, in the meantime, no quarrel had taken place. He has admitted that the tree was of joint ownership of Jibhaji and Rupaji. He has also admitted that they were also having axe and spade for the purpose of cutting the tree. He has admitted that Sarpanch Jiyaji had accompanied them to the police station. He has stated that they reached the police station at 12.00 hrs. where they waited for one hour. He has admitted that before the incident, stones were pelted and they sustained injuries. However, he has denied the suggestion that they sustained injuries because of pelting of the stones.

Jibhaji, PW2-Exh.23 is the father of deceased Jujaji. He has stated that Rupaji Punjaji, accused no.1 is his brother and accused nos.2 to 4 are the sons of accused no.1. He has supported the say of the complainant Kalaji regarding the incident, except the timings. He, in his evidence, has stated that the

incident had taken place at 8.00 a.m. He, in his cross examination, has stated that the incident occurred within a minute. It is not possible for us to accept this part of his evidence as it runs counter to the evidence of the complainant. He has admitted that the accused were giving abuses to them and they started pelting stones. He has also admitted that because of heavy stone pelting, they started running helter skelter and therefore, they sustained injuries.

Jiyaji Bagaji, PW6-Exh.34 is the Sarpanch of villages Jhaghadupur and Chapatia who claims to be an eye witness. According to him, the incident had taken place at about 10.00 a.m. He had gone to inspect the work of check dam undertaken by the Village Panchayat which is near the house of the deceased. Since the labourers had not come, he remained near the house of the deceased, when the deceased Jujaji, Kalaji and one Kanubhai were removing the Babul tree. According to him, the accused came with weapons and started giving abuses and indulged in inflicting indiscriminate blows to the prosecution witnesses. According to him, he has made arrangements to bring a cart so that the injured could be removed to the Police Station and to the Hospital. He had gone to the Hospital at Kapadvanj at about 4.00 p.m. on the same day. In the cross examination, he has specifically denied that he had gone with the injured to the Police Station. He has been contradicted with the police statement when he has stated that he had gone with the injured person Jibhaji in a cart to the Kapadvanj Police Station. He has denied the suggestion that prior to his becoming Sarpanch, he was serving as a Police Constable and because of misconduct, he was dismissed. He had also denied the suggestion that accused no.4 has challenged his candidature as Sarpanch in the second term as accused no.4 wanted to become the Sarpanch. He has been contradicted with his police statement wherein he has stated that at the time of the incident, he was not present at the spot but he was inspecting the work of check dam which is at a distance of 1/2 or 3/4 km. from the scene of offence. He has also tried to improve his version by stating that he tried to intervene and tried to pacify the quarrel. He has denied the suggestion that he was not there at the scene of offence but he reached there later on.

Kantibhai Jibhaji, PW7-Exh.35 has more or less supported the version of the complainant and has given almost identical version. In his cross examination, he has admitted that accused no.4 sustained injuries first in point of time. He has further stated that the

incident had continued for five to ten minutes and many persons gathered there on hearing the shouts.

Suraji Motiji, PW8-Exh.38 and Motiji Jibhaji, PW9-Exh.39 have supported the complainant partly. It is therefore not necessary to refer to their evidence.

6. From the aforesaid evidence of the prosecution witnesses, it is clear that the prosecution witnesses and accused are close relatives. The removal of the Babul tree was not liked by the accused as they believed that they were deprived of their share in the tree. It is clear from the evidence that a quarrel had taken place on account of the tree being illegally removed by deceased and the complainant Kalaji. A quarrel started with exchange of heated arguments, abuses and pelting of stones. From the evidence of Kantibhai, PW7, it is clear that even accused no.4 was also cornered by the prosecution witnesses and who sustained first injury. Thus the commotion has started between the parties wherein the accused inflicted two blows with stick on the head of the deceased.

Dr.Suman Damor, PW1-Exh.13 is the Medical Officer in the Kapadvanj Hospital. She examined injured Motiji Jibhaji, Jibhaji Punjaji, Jijiben Mangaji, Baluben, Kantibhai Jibhabhai, Kalaji Magaji, Amraji Motiji, and Jujaji Jibhaji. She issued the certificate at Exh.22 regarding the injuries sustained by deceased Jujaji. She noticed CLW on left parietal region head 6 cm. x 1 cm. deep and CLW on right occipital region 5 cm. x 1 cm. bone deep. According to her, the injuries on the deceased are possible with hard and blunt substance like stick. In the cross examination, she has stated that the injured were thereafter transferred to the Ahmedabad Civil Hospital after giving treatment to them. She in her cross examination, admitted that the injuries sustained by the deceased on the head are also possible if hit with stones. Dr.Ravindra Bhise, PW13-Exh.48, serving as a Tutor in Forensic Medicine, B.J. Medical College, Ahmedabad, who performed the post mortem of the deceased in his evidence has stated that all the injuries were ante-mortem in nature and the and the cause of death was shock due to the result of head injury.

From the medical evidence on record, it is clear that the deceased died a homicidal death.

7. From the medical evidence on record, it is clear beyond any manner of doubt that deceased Jujaji died of the head injury sustained at the hands of accused no.4.

From the evidence of Jugaji Punjaji, Kalaji Mangaji, and Kantibhai, who were also injured eye witnesses, involvement of the accused is established in commission of the offence. Merely because they are related to each other and in absence of any other independent evidence, their evidence cannot be discarded. We have got our own doubts regarding the presence of Sarpanch Jiyaji at the time of the incident in view of his earlier version before the police that at the relevant time, he was at the site of the check dam and later on, he joined the injured and accompanied him to the hospital and police station. Even if we ignore the evidence of Sarpanch Jiyaji, we are convinced that the evidence of Jugaji, Kalaji and Kantibhai have remained consistent with their earlier statements, who gave all details regarding the part played by the accused including accused no.4. The medical evidence also supports their version regarding use of the stick by accused no.4 in committing the offence. Learned Counsel Mr.Ramakrishnan has submitted that the medical evidence also does not rule out the possibility of injury because of the direct hitting of the stone. It may be stated that merely because the medical evidence does not rule out that possibility, the said suggestion has remained a suggestion only. The medical evidence has specifically stated that the injuries are also possible with the use of stick. Therefore, once we accept the oral evidence of the prosecution witnesses which is supported by the medical evidence, it can safely be concluded that accused no.4 is responsible for causing such injury and therefore, we hold that said accused is liable for causing injuries which proved fatal to the deceased.

8. The question now arises for our consideration is as to what offence accused no.4 has committed. The learned trial Judge has convicted the respondent no.4 for the offence under Sec.324 of IPC. We have made our sincere efforts to find out the reasons for arriving at the said conclusion. We are sorry to observe that we are unable to find out anything from the lengthy judgment as to why accused no.4 was held liable to be convicted under Sec.324 of IPC.

Learned Counsel Mr.Ramakrishnan, however, invited our attention to the fact that even though the deceased was admitted in the Civil Hospital at about 3.00 p.m. on 7.2.1984, he was succumbed to the injury at 8.00 p.m. on 8.2.1984. He therefore submitted that the deceased survived for more than 24 hours and for the lack of proper treatment, he died and therefore, the death is not the direct result of the injuries sustained by the

deceased. He, therefore, submitted that accused no.4 was rightly convicted for the offence under Sec.324 of IPC.

We have gone through the evidence of Dr.Lavendrasing Gohil, PW14-Exh.50, Medical Officer of the Civil Hospital, Ahmedabad. He has examined injured Suraji Motiji, Jibhaji Punjaji, Motibhai Jibhabhai, Kalaji Magaji and deceased Jujaji Jibhaji on 7.2.1984 who were transferred from Kapadvanj Hospital to the Civil Hospital, Ahmedabad. As far as the deceased is concerned, this Doctor has noticed stitched wound over left fronto parietal region size 6 cm and stitched wound over the occipital region size 3 cm. He has stated that he was unable to give any opinion regarding the weapon used as the wound was sutured. In his cross examination, he has stated that deceased Jujaji when admitted in the hospital was unconscious, his pulse rate was 90 per minute, B.P. was 110/70 ml. of mercury pupils reacting to the light. According to him, he considered the condition of the deceased to be dangerous because the injury is on the head and any head injury is considered to be fatal by him. He considered the pulse rate to be high and therefore, considered the patient to be dangerous, as according to him, the normal range of pulse rate is between 70 to 80 in a normally built man. He considers the pulse rate level of 100 or more, however, in the present case, it was 90. According to him, the normal range of blood pressure is 120/80. However, in the instant case, it was 110/70 which is within the normal periphery. According to him, the deterioration of the patient started from 5.00 p.m. From the evidence of Dr.Gohil, it is clear that the deceased was admitted in an unconscious condition and his pulse rate was also quite high, and therefore, probably, the Doctor did not think it advisable to operate the deceased. In absence of any cross examination by the defence regarding the precocious treatment given to the deceased, it is not possible for us to hold that the death of the deceased was not the direct result of the injuries sustained by him. Therefore, it is not possible for us to accept the submission made by Mr.Ramakrishnan. On appreciation of the overall evidence on record, including the medical evidence, we have to hold that the deceased died because of the head injuries sustained by him at the hands of accused no.4 and hence, it is not possible for us to concur with the finding recorded by the learned trial Judge in holding accused no.4 guilty for the offence under Sec.324 of IPC.

9. On appreciating the evidence on record, it is clear that the incident occurred on account of a petty

matter, with regard to getting the share in the Babul tree, after exchange of heated arguments. From the evidence, it is clear that the same resulted into quarrel and commotion thereafter. It is also clear from the evidence that accused no.4 has not taken undue advantage or acted in a cruel or unusual manner as he has inflicted two blows of stick on the head of the deceased. Thus, the act committed by accused no.4, in our opinion, can be termed as an act done with knowledge that it is likely to cause death, but without there being any intention to cause death, would certainly attract the provisions of Part-II of Sec.304 of IPC. Therefore, in our opinion, accused no.4 can, at the most, be held responsible for committing the offence under Sec.304 Part-II of IPC instead of Sec.302 of IPC as contended by learned APP Mr.Chauhan.

10. Learned Counsel Mr.Ramakrishnan has submitted that accused no.4 has been convicted in pursuance of the judgement and order of conviction and sentence dated 29.8.1984 and has already undergone the sentence and was released from the jail on 20.12.1985 and therefore, it would be too harsh for him if he is again sent to the prison after a time gap of 17 years. It is true that the appeal of 1985 is heard after a gap of more than 17 years. However, that fact by itself cannot be a ground to pray for mercy if the offence is established by the Court. In the instant case, after taking into consideration all the aspects of the case, even if we feel that it will be too much for the accused again to undergo the sentence, the said feeling should not come in the way once it is established that the accused is responsible for committing the offence. Under the circumstances, we pass the following order:

The appeal is partly allowed by setting aside the order of conviction and sentence passed by the ld.trial Judge. Respondent no.4 Mohanji Rupaji Solanki is convicted for the offence punishable under Sec.304 Part-II of IPC and is ordered to pay a fine of Rs.10,000/- (Rupees Ten thousand only), in default to undergo rigorous imprisonment for five years. The sentence already undergone by him shall be given credit. In the event of his paying the amount of fine, the same shall be paid to the widow of the deceased and in her absence, to her legal heirs after proper verification. The order of sentence is suspended for a period of three months from today, so as to enable the respondent no.4 to pay the amount of fine. The writ of this order be served through the Officer, Incharge of the Kapadvanj Police Station forthwith.

(Kshitij R. Vyas J.)

(Kamal M. Mehta, J.)

Sreeram.